IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8038 of 2001

with

CIVIL APPLICATION No 3514 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Versus

HIRABHAI BHURABHAI

Appearance:

1. Special Civil Application No. 8038 of 2001

MR BHARAT T RAO for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.B.T.Rao, learned advocate appearing on

behalf of the petitioner Board and Mr.P.H.Pathak, learned advocate for respondent workman.

#. The petitioner Board has challenged the award passed by the Labour Court, Junagadh in Reference No.94 / 1990 [New Number No.1541 / 1990] dated 4th May, 2001, wherein the labour court has granted reinstatement with continuity of service to his original post with 50 % backwages of the interim period. This Court has issued notice on 19th September, 2001 and granted interim relief in terms of Para-8[B]. Thereafter, RULE has been issued on 19th February, 2002. However, it is noticed that at the time of issuing RULE, ad-interim relief has not been made continued by this Court but only admitted the matter.

#. Learned advocate Mr.Rao on behalf of the petitioner Board has raised contention that the petitioner Board is not an industry within meaning of Section 2[j] of the Industrial Disputes Act, 1947. Mr.Rao, learned advocate has also raised contention that before the labour court, because of negligence on the part of the Advocate engaged by the Board, the petitioner Board was not able to produce any oral evidence and proved the contention before the labour court. He has also submitted that before the labour court, the petitioner Board has produced necessary correspondence between the two officers and muster roll and pay registers of the respondent workman. But because of the negligence on the part of the Advocate engaged by the respondent Board by not leading any oral evidence and therefore, in absence of the evidence of the petitioner Board, the labour court has decided the matter. Mr.Rao, learned advocate has submitted that the respondent workman was working at the time employment on fixed term and his services came to be terminated on 31st August, 1988 as he was found negligent. Mr.Rao, learned advocate has also submitted that after termination of the workman, the respondent workman was transferred but he has refused to work at the transferred place except Keshod. Mr.Rao, learned advocate has also submitted that the labour court has committed gross error in granting 50 % backwages of the interim period which amounts to financial burden upon the petitioner Board as the matter remained pending before the labour court for more than eleven years and for that petitioner was not at all responsible for such delay. Therefore, learned advocate Mr.Rao has submitted that the labour court has committed gross error in granting the relief to the respondent workman.

#. Learned advocate Mr.P.H.Pathak on behalf of the

respondent workman has submitted that before the labour court it was undisputed fact that the respondent workman was appointed on 16th June, 1987 and remained in service upto 31st August, 1988 as per the details given by the petitioner Board at pg.16 - Annexure-A. During this period, the respondent has completed 240 days continuous service and since Section 25-F has not been complied with by the petitioner Board, the labour court has rightly set aside the termination order and granted relief while considering the oral evidence of the respondent vide Exh.17 before the labour court. Learned advocate Mr.Pathak has also submitted that the labour court has rightly exercised the powers and considering overall aspects of the matter, denied 50 % backwages of the interim period and therefore, no error has been committed by the labour court while passing such award and therefore, no interference of this Court is called for.

#. I have considered submissions of the learned advocates for the parties. No doubt in written statement, the petitioner Board has raised contention that the petitioner Board is not an industry within the meaning of Section 2[j] of the Industrial Disputes Act, 1947. No oral evidence has been led by the petitioner Board to justify this contention before the labour court. However, the Apex Court has considered this question in case of BANGLORE WATER SUPPLY AND SEWERAGE BOARD v. A. RAJAPPA & ORS reported in AIR 1978 pg.548. The decision referred above is in respect of Bangalore Water Supply and Sewerage Board, whereas, the present petition is filed by the Gujarat Water Supply and Sewerage Board. The names of these two authorities itself suggests that activities of these two corporate authorities can be almost similar and therefore, the ratio laid down by the Apex Court in case of BANGLORE WATER SUPPLY case reported in AIR 1978 pg.548 is certainly applicable to the facts of this case also. The decision of the Apex Court in case of BANGALORE WATER SUPPLY V. A. RAJAPPA, a Reference made by a two Judge Bench of the Court in reported decision 1998 [3] SCC pg.259 to the Hon'ble the Chief Justice of the Supreme Court of India in case of COIR BOARD ERNAKULAM KARLA STATE AND ANOTHER VS. INDIRA DEVAI P.S. AND OTHERS which is reported in 2000 SCC [L & S] 120. Relevant observations made in para-1 & 2 are as under :

"1. We have considered the order made in Civil Appeals Nos.1720-21 of 1990. The judgment in Bangalore Water Supply & Sewerage Board V. A. Rajappa was delivered almost two decades ago and the law has since been amended pursuant to that

judgment though the date of enforcement of the amendment has not been notified.

2. The judgment delivered by seven learned Judges of this Court in Bangalore Water Supply case does not, in our opinion, require any reconsideration on a reference being made by two Judge Bench of this Court, which is bound by the judgment of the larger Bench."

In view of the decision as referred above, the Apex Court has come to the conclusion that said decision of the Bangalore Water Supply and Sewerage Board does not require reconsideration on Reference being made by the two Judge of the Apex Court which is bound by the judgment of the Larger Bench. Therefore, in above view of the matter, the issue is well settled that Water Supply and Sewerage Board - petitioner herein is termed as an industry within meaning of Section 2[j] of the I.D. Act, 1947.

#. Perusal of record at page-16 of this petition, it reflects that the date of joining of the respondent workman is 16th June, 1987 and he was in employment upto 31st August, 1988. From the details as pointed out therein, it is established that during this period, the workman rendered continuous service for 240 days but undisputedly, provisions of Section 25-F of the I.D.Act have not been complied with by the petitioner Board and therefore, the labour court has rightly set aside the termination order passed by the petitioner Board and therefore, granted reinstatement with continuity of service, for that direction, the labour court has not committed any error.

#. Now question is for backwages. The labour court has granted 50 % backwages with effect from 31st August, 1988 till the date of award 4th May, 2001. The matter was referred before the labour court as back as eleven years and no party is at fault but considering the fact that the respondent workman has served with the petitioner Board for one year and two months as daily wager and considering the fact that the petitioner Board is public body, according to my opinion, 50 % backwages awarded by the labour court while considering oral evidence of the respondent workman who was earning Rs.250/- per month while doing miscellaneous work and looking to the last salary of Rs.450 /- drawn by the respondent workman as reflected from pg.16, according to my opinion, the respondent workman was in gainful employment upto Rs.250/- and therefore, backwages awarded by the labour

court seems to be higher side and the same requires to be reduced in the interest of justice. Therefore, considering the entire facts and circumstances of the case, according to my opinion, if the backwages is reduced to 35 % of the interim period, will meet the ends of justice. The award in question requires to be modified qua backwages only but this Court is not inclined to disturb the rest of the directions granting reinstatement with continuity of service and same will remain intact.

#. Lastly learned advocate Mr.Rao has also raised contention that though papers available with the labour court produced by the petitioner Board but the labour court has not considered the said documents whereby the petitioner Board was pointed out that respondent was given fixed wages by the petitioner Board. However, according to learned advocate Mr.P.H.Pathak for respondent workman that this contention raised by learned advocate Mr.Rao was not raised by the petitioner Board before the labour court and therefore, same cannot be considered.

#. In view of above discussion, present petition is partly allowed. The award in question passed by the labour court, Junagadh in Reference No.94 / 1990 [New Number - 1541 / 1990] dated 4th May, 2001 is modified qua backwages only and the same is reduced to 35 % instead of 50 % of the interim period as specified in the award. The rest of the directions issued by the labour court concerned granting reinstatement with continuity of service is not disturbed by this Court and the same will stand unaltered.

Rule is made absolute to the extent indicated above. Ad-interim relief, if any, stands vacated. No order as to costs.

Today, since this Court has disposed of the main matter, no order requires in Civil Application No.3514 / 2002 filed in main proceedings and hence, the Civil Application stands disposed of accordingly.

Direct Service to respondent is permitted.

Date : 8-5-2002 [H.K.Rathod, J.]

#kailash#